

## Tennis, Rachel

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**From:** Nicholas W. van Aelstyn <NvanAelstyn@bdlaw.com>  
**Sent:** Thursday, November 07, 2013 3:04 PM  
**To:** Tennis, Rachel  
**Cc:** Jia Y. Chen  
**Subject:** Yosemite Slough 2012 Sampling Data Collected on Cal Parks Property  
**Attachments:** Phase II PCB data.pdf; Phase II Metals data.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Rachel,

Good talking with you yesterday. It occurred to me after we spoke that there was one other item that I'd neglected to raise with you: sampling data collected by the Parks Foundation in 2012 on Cal Parks property, particularly that on the south shore area.

As background, attached is a copy of Table 3e from the study, *Northgate Environmental Management, Inc. 2004. Phase 2 Environmental Site Assessment, Yosemite Slough Wetlands Restoration*, which I believe was prepared under contract with the California State Parks Foundation but for the benefit of the California Department of Parks and Recreation ("DPR," also known as "Cal Parks"). It shows several hits for PCBs on the South Shore above 1000 ppb – most notably a hit for 24,300 ppb at SB20 (the deeper ECO sampling, not the shallower CS sampling). There are similar hotspots for lead which are shown in Table 3a, a copy of which is also attached.

Since Northgate collected this data in 2004, it collected another round of data in 2012. Elizabeth Nixon of Northgate and Gary Smith of Cal Parks have repeatedly stated during Technical Stakeholder Committee ("TSC") meetings that these hotspots "went away" in the 2012 data, but they have declined repeated requests by EPA and the other members of the TSC to share this data. In an effort to obtain this data, we submitted a Public Records Act request to the California Regional Water Quality Control Board, which is overseeing the wetlands mitigation project. We received voluminous information from the Regional Board, but their files do not contain this data either. Last month I also took this up with DPR counsel Kathryn Tobias, and after some back-and-forth she responded as follows:

Here is the explanation that I've been given by the Parks Foundation as to the availability of technical data on the south side of the Slough. CSPF [the Parks Foundation] has reviewed their plan for the south side rehabilitation, due to financial considerations. They are now in the process of actually revising their plans. They are not releasing any data until they are done with their plans. They have a six-month contract with their consultant so they are sure that the data will be available no later than 6 months from now. The data has not been provided to State Parks. It's important to understand that CSPF has pursued this project on its own; it is not legally a "state parks project" although it does occur on State Park property.

I find it striking both that DPR can hide behind a private organization, CSPF, and that CSPF – which has participated in all of the TSC meetings – should withhold data from EPA that clearly is relevant to the remediation of the Site, despite repeated requests that it be shared. I encourage EPA to demand the production of this information, perhaps by sending a 104e information request to CSPF or asking the Regional Board to demand the production of the data as part of its oversight of the wetlands mitigation project.

Please don't hesitate to contact me should you have any questions about this. Thanks.

Sincerely,

Nico

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